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ROGITZ & ASSOCIATES 750 B STREET SUITE 3120 SAN DIEGO, CA 92019			EXAMINER PHAM, CHRYSTINE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/629,431	Applicant(s) MAGID, ROBERT MARK	
	Examiner Chrystine Pham	Art Unit 2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to application Amendments filed on March 1, 2007.
Claims 1 and 5 have been amended. Claims 2-4 have been canceled. Claims 1, 5-30 are presented for examination.

Remarks

2. In response to Applicant's remark that "the Section 112 rejection based on an alleged lack of antecedent basis for 'IMS system server' in Claim 1, line 5 *appears to be incorrect*" (Emphasis added)(Remarks, page 9/12, first paragraph), it must be clarified that said 112 rejection was necessary and correct prior to Applicant's amendment of Claim 1. In other words, this rejection has been rendered moot only in view of the amended claim 1.

Response to Amendment

3. In view of the amendment to claim 1 to overcome the rejection of claims 1-10 under second paragraph of 35 USC 112 (lack of antecedent basis), the rejection of claims 1-10 under second paragraph of 35 USC 112 is hereby withdrawn.

In view of the amendment to claim 1 to include the un-abbreviated term "Information Mangagement System" to maintain the intended meaning for the term's abbreviation "IMS", the objection of claims 1-30 is hereby withdrawn.

Response to Arguments

4. Applicant's arguments filed March 1, 2007 have been fully considered but they are not persuasive.

Argument 1: "the exit routine mentioned in Fortin is for the purpose of collecting statistics, rather than for any purpose for which a user chooses to adapt and customize the system" (Remarks, page 9/12, starting from last paragraph, ending on top of page 10/12). It is respectfully submitted that while this Fortin may have a different purpose for the exit routine (e.g., collecting performance statistics), the plain language of the claims does *not* exclude the exit routine's purpose from collecting performance statistics. Furthermore, using an exit routine to collect performance statistics clearly anticipates "enhancing the function of the system and user software" as argued by Applicant.

Argument 2: "With the presently claimed combination of features, *no preexisting software need to be modified other than the calling sequence of the 'target' exits*, to thereby transparently expand this single interface to multiple users without modification to any system or user code" (Remarks, page 10/12, second paragraph). It is respectfully submitted that this feature is irrelevant to the invention, as *claimed*, since the plain language of the claims does not expressly exclude preexisting software from being modified.

Argument 3: "Fortin's elements 720 and 722 are lines drawn between the *common exit code* in the library and a user-supplied exit routine, strong implying just the opposite of what is claimed" (Remarks, page 10/12, last paragraph). It should be noted that a *common exit code* clearly anticipates a single instance of a given exit interface that is used by multiple target routines/users. Thus, this argument appears to contradict with Argument 1, in which Applicant asserts that Fortin does not teach a single instance of a given exit interface. Furthermore, as established in the previous Office Action (page 3), col.5:45-60 of Fortin explicitly teaches selecting a single exit routine (see at least 706, 720, 722 FIG.7 & associated text; *appropriate common user specific exit routines, demultiplexor, single exit routine, available routines* col.5:45-60; col.6:19-67) to monitor a number of software programs (i.e., multiple target routines)(see at least Fortin Abstract). Thus the user-supplied exit routine is one of multiple available exit routines that can be selected to be the *common* exit code/interface that is used to monitor the multiple target routines.

Argument 4: "With respect to Baer and Fortin ..., the proffered motivation to combine has been made without regard to what the references fairly teach or suggest" (Remarks, page 11/12, first paragraph). The Examiner strongly and respectfully disagrees. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443

Art Unit: 2192

(Fed. Cir. 1992). In this case, as established in the previous Office Action (page 4), since Fortin and Baer are analogous art because they are both directed to storing routines in program library which is accessible to calling routines at runtime and Baer teaches storing routines (i.e., program modules, code) in an IMS program library (see at least 110, 140 FIG.1 & associated text; 210-270 FIG.2 & associated text; *information management system, digitized data, functions, procedures, distributed objects, library server 110, library catalog 140* col.1:10-67) to make access of library objects (i.e., common exit routines) available to multiple users (i.e., target routines) as well as allowing the users to store and retrieve said objects (e.g., exit routines) (see at least Baer *distributed objects, information management system, digitized data* col.1:10-3:15). The motivation to combine is considered reasonable advantageous as has been established.

Argument 5: "Fortin does teach comparing 'a candidate user-exit' load module to a pretermained interception routine and 'eye-catcher' and treating a non-matching 'candidate user-exit' load module as a user exit routine" (Remarks, page 11, last paragraph). Although Fortin does not use the terms 'candidate user-exit' and 'eye-catcher' per se, Fig.5 & associated text (see at least col.5:45-col.6:35) explicitly discloses the demux entry inserting instructions (i.e., instrumentation code) that link the target routines (i.e., transfer execution flow) to the selected common exit routine (see at least 718, 724 FIG.7 & associated text) which resides in the routine library 504. Since it is inherent that each of the multiple routines in the library has its own unique (i.e., non-matching) identification (e.g., name and/or address) and the instrumentation code

Art Unit: 2192

always transfer execution flow to the selected common exit routine (i.e., predetermined interception routine “eye-catcher”), Fortin clearly teaches “comparing ‘a candidate user-exit’ load module to a predetermined interception routine and ‘eye-catcher’ and treating a non-matching ‘candidate user-exit’ load module as a user exit routine”.

5. In view of the foregoing discussion, rejection of claims under 35 USC 103(a) is considered proper and maintained.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 21-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 21

Merely recited as “a computer program *device* ... comprising: *logic means* for ...”, the claim does not limit the *device* to a statutory machine which contains physical components since the *logic means*, as claimed, is clearly not a physical component nor is it equivalent to “executable means” in a *computer-readable medium* claim.

Claims 22-30

They are also rejected for failing to remedy the deficiency of rejected base claim 21.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 11-14, 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fortin (US 5528753 A) in view of Baer et al. (US 6035303 A, "Baer").

Claim 1

Fortin teaches a method for intercepting user exit interfaces in programs (see at least 718, 720, 722, 724 FIG.7 & associated text; 212 FIG.3 & associated text), comprising: installing a program library at a user computer as the first library in an program library concatenation, the program library including an interception routine (see at least 504 FIG.5 & associated text; 606 FIG.6A & associated text; *target routine*, *routine library*, *Exit Routine* 212 col.4:17-65; *instrumentation library* 504, *exit routines* col.5:20-30); dynamically loading an interface routine (see at least 506 FIG.5 & associated text; 702, 704 FIG.7 & associated text; *target routine*, *routine library*, *exit points*, *Exit Routine* 212 col.4:17-65); and wherein the interception routine communicates with the interface routine to resolve name ambiguity and enable simultaneous use of a single exit (see at

Art Unit: 2192

least 706, 720, 722 FIG.7 & associated text; *appropriate common user specific exit routines, demultiplexor, single exit routine, available routines* col.5:45-60; col.6:19-67).

Fortin does not expressly disclose said programs as IMS programs and said server as IMS server. However, Baer teaches storing routines in a IMS program library (see at least 110, 140 FIG.1 & associated text; 210-270 FIG.2 & associated text; *information management system, digitized data, functions, procedures, distributed objects, library server 110, library catalog 140* col.1:10-67) and loading the interface routine at the IMS server wherein the interface routine communicates with the other routines in the library to resolve name ambiguity and enable simultaneous use of a single exit by plural users (see at least *API functions, digital library, mapping, table name, column name* col.4:28-col.5:40; FIG.3C & associated text; 130, 131 FIG.1 & associated text). Fortin and Baer are analogous art because they are both directed to storing routines in program library which is accessible to calling routines at runtime. It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to incorporate the teaching of Baer into that of Fortin for the inclusion of IMS programs and IMS server. And the motivation for doing so would have been to make access of library objects (i.e., common exit routines) available to multiple users as well as allowing the users to store and retrieve said objects (see at least Baer *distributed objects, information management system, digitized data* col.1:10-3:15).

Art Unit: 2192

Fortin as modified by Baer further teaches passing control from an IMS program at the IMS system server to the interface routine (see at least col.5:45-60; col.6:19-67).

Fortin as modified by Baer further teaches receiving (i.e., passing) control at the interception (i.e., exit) routine from the IMS program (see at least col.5:45-60; col.6:19-67).

Fortin further teaches establishing the interception routine as a user exit routine (see at least *target routine, routine library, Exit Routine 212* col.4:17-65).

Claim 11

Claim recites a system version of the method addressed in claim 1, therefore, is rejected for the same reasons as cited in claim 1.

Claims 12-14, 21-24

Claims recite limitations, which have been addressed in claims 1-4, therefore, are rejected for the same reasons as cited in claims 1-4.

10. Claims 5-10, 15-20, 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fortin in view of Baer further in view of Chan et al. (US 6460178 B1, "Chan").

Claim 5

The rejection of base claim 4 is incorporated. Fortin and Baer do not expressly disclose obtaining the name of each library in an IMS program library concatenation at the interception routine. However, Chan teaches obtaining the name of each library in a program library concatenation at the interception routine (see at least FIG.4A & associated text; *existing programs, name of library 401, shadow libraries 412, 413* col.10:13-30). Chan and Fortin are analogous art because they are both directed to maintaining program library containing routines. It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to incorporate the teaching of Chan into that of Fortin for the inclusion of obtaining the name of each library. And the motivation for doing so would have been to enable the addition of new libraries by the same names (for the purpose of code instrumentation and optimization) without modifying external applications (i.e., programs and code) that rely on said libraries (see at least Chan col.10:13-55).

Claim 6

The rejection of base claim 5 is incorporated. Chan further teaches dynamically allocating each library in the IMS program library concatenation as a separately accessible file at the interception routine (see at least FIG.4B & associated text).

Claims 15-16, 25-26

Art Unit: 2192

Claims recite limitations, which have been addressed in claims 5-6, therefore, are rejected for the same reasons as cited in claims 5-6.

Claim 7

The rejection of base claim 6 is incorporated. Fortin further teaches determining of any of the libraries includes a load module with the same name as the interface routine; and flagging a first block of a matching load module as a "candidate user-exit." (see at least FIG.3 & associated text; FIG.7 & associated text).

Claim 8

The rejection of base claim 7 is incorporated. Fortin further teaches comparing a "candidate user-exit" load module to a predetermined interception routine "eye-catcher"; and treating a non-matching "candidate user-exit" load module as a user exit routine (see at least FIG.3 & associated text; FIG.7 & associated text).

Claims 9-10, 17-20, 27-30


Claims recite limitations, which have been addressed in claims 1-8, therefore, are rejected for the same reasons as cited in claims 1-8.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chrystine Pham whose telephone number is 571-272-3702. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on 571-272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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SUPERVISORY PATENT EXAMINER